

NOT FOR PUBLICATION

(Doc. No. 15)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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TERENCE McDANIEL	:	
	:	
Plaintiff,	:	Civil No. 13-6583 (RBK/AMD)
	:	
v.	:	
	:	<b>ORDER</b>
JOSEPH HAWTIN,	:	
	:	
Defendant.	:	
	:	

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**KUGLER**, United States District Judge:

**THIS MATTER** having come before the Court on Plaintiff Terence McDaniel’s (“McDaniel”) Motion for Default Judgment (Doc. No. 15) on his Eighth Amendment excessive force claim against Defendant Joseph Hawtin (“Hawtin”); and

**IT APPEARING TO THE COURT THAT**

1. McDaniel, a federal prisoner, submitted for filing his civil complaint (“Complaint”) and application to proceed *in forma pauperis* on October 31, 2013. (See Doc. No. 1.) In his Complaint, McDaniel alleged multiple claims against three defendants: (1) Donna Zickefoose—Warden F.C.I. Fort Dix, (2) Joseph Hawtin—Correctional Officer (“Hawtin”), and (3) Physician’s Assistant Wilks. (See generally Compl.) The Court granted McDaniel *in forma pauperis* status, screened the Complaint for sua sponte dismissal, and dismissed McDaniel’s claims against Donna Zickefoose and Wilks. (See Doc. Nos. 3–4.) The Court permitted McDaniel’s claim against Hawtin to proceed, and

directed service upon Hawtin. (Doc. No. 4.) The United States Marshal duly executed said service upon Hawtin on June 27, 2014. (See Doc. No. 6.)

2. Although the Court's order directing service explicitly directed Hawtin to "file and serve a responsive pleading within the time specified by Fed. R. Civ. P. 12" pursuant to 42 U.S.C. § 1997(e)(g)(2), Hawtin has filed no responsive pleading in this matter. (See generally Docket.)
3. On September 18, 2014, McDaniel moved for default judgment. The Court denied the motion on account of McDaniel having failed to first request entry of default by the Clerk of the Court. (See Doc. No. 8.) McDaniel thereafter properly requested and obtained the Clerk's entry of default on June 22, 2015. (Doc. No. 13.) McDaniel again moves for default judgment against Hawtin.
4. The decision to grant or deny a motion for default judgment lies primarily with the district court. See Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984). However, in determining whether entry of default judgment is appropriate, district courts must consider the Third Circuit's "well-established policy of disfavoring default judgments and encouraging decisions on the merits." Husain v. Casino Control Comm'n, 265 Fed. App'x 130, 133 (3d Cir. 2008) (internal quotations omitted); see also Budget Blinds, Inc. v. White, 536 F.3d 244, 258 (3d Cir. 2008) ("We acknowledge that default judgments are generally disfavored in our circuit."); Hritz, 732 F.2d at 1181 ("We have repeatedly stated our preference that cases be disposed of on the merits whenever practicable.").
5. Here, the Court notes its grave concern with Hawtin's failure to file and serve a responsive pleading. However, given the drastic remedy of default judgment, an in an

abundance of caution, the Court will direct service of this Order upon Hawtin and deny McDaniel's motion without prejudice.

**IT IS THEREFORE ORDERED** that the Court's adjudication of McDaniel's motion for default judgment is **DENIED WITHOUT PREJUDICE**;

**IT IS FURTHER ORDERED** that the United States Marshal shall serve a copy of the Complaint (Doc. No. 1) and this Order upon Hawtin, pursuant to 28 U.S.C. § 1915(d);

**IT IS FURTHER ORDERED** that Hawtin shall file and serve his responsive pleading within **sixty (60) days** from the date of entry of this Order. Hawtin may not seek any extension of time to file and serve his responsive pleading;

**IT IS FURTHER ORDERED** that in the event Hawtin fails to file and serve his responsive pleading within sixty days from the date of entry of this Order, McDaniel shall file with the Clerk his written statement informing the Court of Hawtin's failure and requesting renewal of his motion for default judgment;<sup>1</sup> and

**IT IS FURTHER ORDERED** that the Clerk shall serve this Order upon McDaniel by regular U.S. mail.

Dated: 03/16/2016

s/Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge

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<sup>1</sup> The Court recognizes McDaniel's pro se status, and therefore, he need not file another formal motion seeking default judgment. A letter in laymen's terms that apprises the Court as to whether Hawtin has or has not filed a responsive pleading will suffice.